



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.
COLUMBIA, SOUTH CAROLINA

August 21, 2009

VIA ELECTRONIC FILING

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

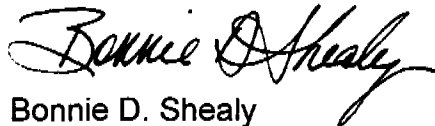
**Re: DUKE ENERGY CAROLINAS NOTICE OF TERMINATION OF
ELECTRIC SERVICE TO JAMES AND PATRICIA TARMANN
Docket No. 2002-57-EC**

Dear Mr. Terreni:

Enclosed for filing please find Duke Energy Carolinas, LLC's Notice of Termination of Electric Service to James and Patricia Tarmann and correspondence to the Tarmanns. We are providing copies of both to the Office of Regulatory Staff by copy of this letter.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.


Bonnie D. Shealy

/bds
Enclosure

cc/enc: James and Patricia Tarmann (Federal Express & U.S. Mail)
Dan F. Arnett, ORS Chief of Staff
Nanette Edwards, ORS (via email)
Catherine E. Heigel, Associate General Counsel (via email)
Barbara Yarbrough (via email)

Bonnie D. Shealy

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 779-8900 | (803) 227-1102 *direct*

FAX

(803) 252-0724 | (803) 744-1551 *direct*

bshealy@robinsonlaw.com

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2002-57-E/C

IN RE:

Duke Energy Carolinas, LLC
Notice of Termination of Electric
Service to James Tarmann and
Patricia Tarmann

)
)
)
) **NOTICE OF TERMINATION**
) **OF ELECTRIC SERVICE**
)
)
)

Pursuant to 26 S.C. Regs. 103-342, 103-352, and other applicable South Carolina law, Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") provides **NOTICE OF TERMINATION** of electric service to James and Patricia Tarmann ("Tarmanns") of 1291 White Horse Road Extension, Travelers Rest, South Carolina within **TEN (10) DAYS OF THE DATE OF THIS NOTICE.**

The meter on the Tarmanns' property is no longer sending a signal to the offsite meter reading device. The Tarmanns have prohibited Duke Energy Carolinas employees from entering onto their property that has resulted in Constructive Termination of Service. As a result the Company cannot remove and replace the inactive meter.

Mr. Tarmann served a Trespass Notice dated November 13, 2004, directed to "Duke Power, employees and representatives." The Notice provided that "if you fail to honor this notice and return to my property, you will be charged with TRESPASSING AFTER NOTICE (S.C. code 16-11-600)." As a result of the Notice, Mr. Tarmann denied Duke Energy Carolinas reasonable access to his premises in violation of both the Commission's regulations and the Company's Service Regulations which are incorporated by reference in the agreement for

electric service between the customer and the Company. This violation was grounds for the Company to discontinue electric service to the Tarmann residence pursuant to 26 S.C. Reg. 103-342(f) and 26 S.C. Reg. 103-344.

A Notice of Constructive Termination was filed December 3, 2004, in Docket No. 2002-57-C, copy attached. The Commission issued Order No. 2007-416, in Docket No. 2007-416, finding that Mr. Tarmann had “constructively abandoned his own service to the extent that the Trespass Notice prevents Duke from maintaining its lines and equipment on his property.” Order No. 2007-416, p. 2, ¶ 3.

Because the Company’s employees are physically prevented from entering the property, Duke Energy Carolinas now provides **NOTICE THAT ELECTRIC SERVICE TO THE TARMANN RESIDENCE WILL BE TERMINATED WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE.**

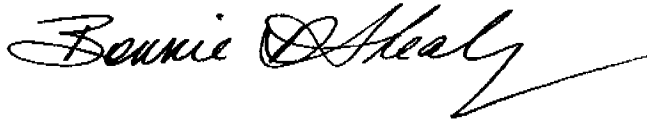
If the Tarmanns revoke the Trespass Notice and allow Duke Energy Carolinas’ employees access to repair or replace the meter, pursuant to 26 S.C. Reg. 103-352, they must contact the Duke Energy Carolinas representative below prior to the expiration of the ten day notice period:

**Barbara G. Yarbrough
Duke Energy Carolinas
Mail Code EC06O
PO Box 1006, Charlotte, NC 28201-1006
Telephone: 704-382-7412**

If electric service is terminated and the Tarmanns request reconnection, an appropriate charge will be assessed.

Dated this 21st day of August, 2009.

Robinson, McFadden, and Moore, PC

A handwritten signature in black ink, reading "Bonnie D. Shealy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

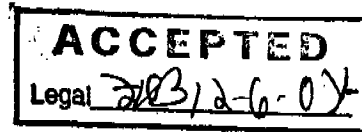
Bonnie D. Shealy
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, South Carolina 29202
(803) 779-8900
bshealy@robinsonlaw.com

and

Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, NC 28202
(704) 382-8123
Email: ceheigel@duke-energy.com

ATTORNEYS FOR RESPONDENT,
DUKE ENERGY CAROLINA, LLC

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC



IN RE:
Mr. and Mrs. James Tarmann,)
)
Complainants,)
)
vs.)
)
Duke Power, BellSouth and)
the Public Service Commission)
Staff,)
)
Respondents.)

**NOTICE
OF
CONSTRUCTIVE TERMINATION**

2004 DEC -3 PM 3:31
P. J. ...
C. J. ...

TO: The Public Service Commission of South Carolina ("Commission"), please take notice:

INTRODUCTION

The Respondent, Duke Power, n/k/a Duke Power, a division of Duke Energy Corporation ("Duke") by and through its undersigned attorneys, hereby provides NOTICE OF CONSTRUCTIVE TERMINATION ("NOTICE") to this Commission. Duke hereby serves (1) one copy of this NOTICE upon the Tarmanns and hereby files the original and (10) ten copies of its NOTICE with the Honorable Charles Terreni, Chief Clerk and Administrator of the Commission and provides a copy of this Notice to the Tarmanns by Federal Express and provides copies to all parties of record by hand delivery.

PROCEDURAL HISTORY¹

This Commission issued its Order No. 2002-137 on February 28, 2002, granting the Complainants a formal hearing and setting a hearing date, and a Pre-filing Order No. 2002-171, was issued on March 8, 2002. A formal hearing before the Commission was held on April 10, 2003 at which Duke, the Tarmanns and the other Respondents all appeared and provided testimony. The Commission issued its ORDER RULING ON COMPLAINT, NO. 2003-358 on June 13, 2003. Duke requested clarification of this Order and this Commission issued its ORDER RULING ON PETITION FOR CLARIFICATION, NO. 2003-575 on September 18, 2003. Respondent Duke provided its report on compliance to this Commission, via hand delivery on November 14, 2003. The Tarmann's corresponded with this Commission, on or about, November 12, 2003 and set forth what could be characterized as a new Complaint against Bellsouth and complained, in general, about Duke's alleged actions. Thereafter, on November 21, 2003, this Commission served a Complaint on Duke's counsel (under the same Docket No. as the original Complaint), which required Duke to respond. As permitted by the South Carolina Rules of Civil Procedure and in lieu of an ANSWER, Duke filed a MOTION TO DISMISS with this Commission on or about December 22, 2003. Duke's MOTION is still pending. Thereafter, this Commission requested that the Office of Regulatory Staff ("ORS") contact all parties to this Docket and attempt to mediate the dispute, if possible. As a result of that referral to the ORS, representatives of all parties met at the Tarmanns' premises on or about October 26, 2004. Just prior to the October meeting, the Tarmanns' apparently complained to the Office of Representative Harry Cato, in his role as Chairman of the Labor, Commerce, and Industry Committee of the South Carolina General Assembly. Robert R. Smith, II, Esquire, also attended the October meeting at the Tarmanns' premises on behalf of

¹ All Orders and documents referenced are on file with this Commission and are incorporated herein by reference as if set forth herein verbatim.

Representative Cato. Thereafter, upon information and belief, the Tarmanns' served a Notice of Trespass upon all parties to this Docket and the ORS. The Tarmanns' Notice of Trespass was issued pursuant to South Carolina law and is directed to Duke, its employees, and representatives. A copy of the Notice of Trespass/Letter is attached as "Exhibit A." Although Duke's Service Regulations and easement grant it the right to access the property for the purpose of providing electric service, under South Carolina law the Notice of Trespass may take precedence unless and until the issue is resolved as a matter of law. The possible penalties are severe and include a fine and imprisonment. Duke notes that pursuant to its Service Regulations and easement, Duke has unrestricted access to the Tarmanns' premises for any purpose, including responding to an outage, maintaining electric service to the Tarmanns' premises, and making any changes to the Tarmann's electric service. Accordingly, Duke cannot and will not permit its employees and representative to enter onto the Tarmanns' premises under any circumstances. Duke will not take affirmative steps to terminate electric service to the Tarmanns' premises. However, the Tarmanns, by way of their Notice of Trespass, have constructively terminated their electric service in that for any reason, including in the event of an outage, Duke's employees and/or representatives will not enter onto the Tarmanns' premises to correct an outage, maintain or change their electric service.² Duke's NOTICE follows.

RESERVATION OF RIGHTS

Duke must and hereby does reserve all rights attendant to its defense of the Tarmanns' complaint referenced above, and in general. Specifically, Duke reserves all rights as set forth below.

² Duke owes a duty to its employees and representatives which it takes very seriously. Mr. Tarmann has, upon information and belief, previously communicated threats to Duke's employees and other parties to this Docket. As outlined above, the Tarmanns' have also filed a Notice of Trespass, under South Carolina law, which is applicable to Duke's employees and representatives. In recognition of the previous threats and the Notice of Trespass, Duke cannot and will not permit its employees and representatives to enter onto the Tarmanns' premises for any reason.

Duke has previously reported its full compliance with this Commission Orders. Additionally, this Commission Staff has, on two occasions, reported to this Commission that Duke was in compliance with this Commission's Orders and that no Duke power lines were exposed. (Although no official report has been issued from the October 26, 2004 visit to the Tarmanns' premises, one of Duke's counsel can, from his personal knowledge, report to this Commission that none of Duke's electric lines were found exposed on the Tarmanns' premises during the October 26, 2004 visit.)

This Commission has issued appropriate Orders in this matter, and those Orders were not appealed by the Tarmanns and they are now the law of this case.

Accordingly, Duke hereby makes it clear for the record, that it does not waive any of its rights, remedies or defenses, legal or equitable, all of which are expressly reserved. Furthermore, Duke believes that it has fully complied with the Commission's Orders and that the complaint(s) against Duke is, as a matter of law, concluded.

NOTICE OF CONSTRUCTIVE TERMINATION

YOU WILL PLEASE TAKE NOTICE that the Respondent, Duke hereby concludes that its present electric service to the Tarmanns' premises has been constructively terminated as set forth above and for the reasons set forth above. Accordingly, although Duke will take no affirmative steps to terminate electric service to the Tarmanns' premises, the Tarmanns, have denied Duke's employees and/or representatives reasonable access to the Tarmanns' premises despite Service Regulations approved by the Public Service Commission of South Carolina ("Commission") and its easements to the Tarmanns' property. Pursuant to Duke's Service Regulations and easement, Duke has unrestricted access to the Tarmanns' premises for any purpose, including responding to an outage, maintaining electric service to the Tarmanns' premises, and making any changes to the Tarmann's electric service. The Tarmanns thereby constructively terminated their electric service

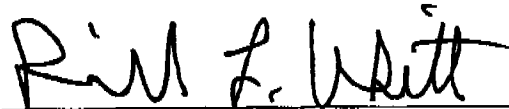
in that Duke's employees and/or representatives will not enter onto the Tarmanns' premises for any other reason, including to correct a reported outage, maintain or change electric service. Regrettably, this means that Duke's employees and representatives will not respond and travel onto the Tarmanns' premises for any other reason, including the result of any service call, or outage report. Notwithstanding this NOTICE, Duke does not waive its right of ingress to and egress from the Tarmanns' premises or any other electric customer's premises pursuant to its Service Regulations and property rights and expressly denies that it is creating precedent by this NOTICE. Instead, Duke expressly reserves all rights and intends to exercise its rights on a case-by-case basis. When, as in the instant case, Duke believes that it must protect its employees and/or representatives, it will fulfill its duty to the same, by taking the actions outlined in this NOTICE. **The Tarmanns will be placed on notice, under separate cover, that they have assumed the risks of their actions as a result of this constructive termination.** (A copy will be furnished to the General Counsel of this Commission, the General Counsel of ORS, and the counsel of the parties to this Docket.)

CONCLUSION

Based on the foregoing, although Duke will take no affirmative steps to terminate electric service to the Tarmanns' premises, the Tarmanns, have denied Duke's employees and/or representative reasonable access to the Tarmanns' premises, placed Duke's employees and/or representatives in potential danger and thereby constructively terminated their electric service to their premises, in that Duke's employees and/or representatives will not enter onto the Tarmanns' premises for any reason, including to correct a reported outage, maintain or change electric service. The Tarmanns' actions are in contravention of this Commission's rules, Duke's Service Regulations (agreed to by the Tarmanns in order to receive electric service) its property rights pursuant to its

easement onto the Tarmanns' property and the basic service agreement between Duke and the Tarmanns³.

Respectfully submitted this 3rd day of December 2004.



William F. Austin
Richard L. Whitt
AUSTIN, LEWIS & ROGERS, P.A.
508 Hampton Street, Third Floor
Columbia, South Carolina 28201
Telephone: (803) 256-4000

Lara Simmons Nichols, Assistant General
Counsel
DUKE POWER, a division of
DUKE ENERGY CORPORATION
Post Office Box 1244, PBO5E
Charlotte, North Carolina 28201-1244
Telephone: (704) 382-9960

ATTORNEYS FOR RESPONDENT
DUKE POWER, n/k/a Duke Power, a division
of DUKE ENERGY CORPORATION

Columbia, South Carolina

³ See regulations 103-325 (D) and 103-342 (E) (F). Also, see Duke's Service Regulation Leaf "B" which is applicable. Specifically, the Tarmanns have agreed that Duke shall have, at all reasonable times, the right of ingress to and egress from the Tarmanns' premises for any and all purposes for the delivery of electric service under Duke's agreement with the Tarmanns. Duke's Service Regulation Leaf "G" also applies. The Company shall have the right to deny, suspend or disconnect its service as provided in the Rules and Regulations governing service supplied by electric systems in South Carolina.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC

IN RE:)
Mr. and Mrs. James Tarmann,)
)
Complainants,)
)
vs.)
)
Duke Power, BellSouth and the)
Public Service Commission Staff)
)
Respondents.)

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Austin, Lewis and Rogers, P.A., attorneys for Duke Power ("Duke"), n/k/a Duke Power, a division of Duke Energy Corporation, do hereby certify that I have served the foregoing Notice of Constructive Termination by Federal Express and/or hand delivery as set forth below:

VIA Federal Express to Each
Mrs. Patricia Tarmann
Mr. James Tarmann
1291 Whitehorse Road Extension
Travelers Rest, South Carolina 29690

VIA HAND DELIVERY
The Honorable Charles Terreni
Jocelyn Boyd, Esquire
David Butler, Esquire
Randy Watts
Dr. James Spearman
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
101 Executive Center Drive (Saluda Building)
Columbia, South Carolina 29211

VIA HAND DELIVERY
Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
1600 William Street, Suite 5200
Columbia, South Carolina 29201

VIA HAND DELIVERY
Florence P. Belser, Esquire
April Sharpe
John W. Flitter
Dan Arnett
Office of Regulatory Staff
Third Floor, 1441 Main Street
Columbia, South Carolina 29201


Rhonda G. Wimberly

December 3, 2004

TRESPASS NOTICE

(Notice of No Trespassing)
Greenville County Sheriff's Office
4 McGee Street Greenville, SC

Exhibit A, Page 1

11/13/04
Date

TO: Duke Power employees and representatives
name of person on notice of no trespass

P.O. Box 1244, PBOSE
street address

Charlotte NC 28201-1244
city, state, zip code

This letter is to notify you that you are hereby placed on TRESPASS NOTICE on any and all property, which I own located at:

1201 White Horse Rd Ext.

Travelers Rest, South Carolina 29640

If you fail to honor this notice and return to my property, you will be charged with TRESPASSING AFTER NOTICE (S.C. Code 16-11-600).


Property owner signature

11/13/04
Date

Mail this notice certified mail, with restricted delivery, return receipt requested. Keep the receipt and a copy of this letter for your file.

Property Owner - Read page two (2) for important instructions.

Exhibit A, Page 2

November 12, 2004

Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

RE: James and Patricia Tarmann Vs. Duke Power, BellSouth,
And the South Carolina Public Service Commission.

To Whom It May Concern:

It should be noted for the record that no one represents me in the above mentioned complaint, but myself personally.

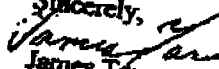
Furthermore, it should be noted for the record that I have not been contacted by the Office of Regulatory Staff, nor have I granted them the right to act on my behalf as my representative or agent legal or otherwise in the resolution of the above referenced matter. Any such acts to resolve this matter without my direct participation in the process and resolution will be a violation of my civil rights, and will be challenged.

As conveyed numerous times, I will not tolerate trespassing on my property without my explicit consent, and presents. All parties have now violated this right. Any information obtained, or acts committed while trespassing will be challenged.

As conveyed numerous times, I will not tolerate trespassing!
"See Attached Trespass Notice"

I am also fully aware of the slanderous remarks and acts against my character, that I am a threat to the health and welfare of the resolution of this complaint, and will be addressed in the near future, among other charges.

Sincerely,


James Tarmann

Jt

c: BellSouth
Duke Power
PSC
Patricia Tarmann

AUSTIN, LEWIS & ROGERS, P.A.

ATTORNEYS AND COUNSELORS AT LAW

WILLIAM F. AUSTIN
E. CROSBY LEWIS
TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
JEFFERSON D. GRIFFITH, III*
EDWARD L. EUBANKS
W. MICHAEL DUNCAN
KELLY H. RAINSFORD
WILLIAM B. BRYANT

CONGAREE BUILDING
508 HAMPTON STREET, SUITE 300
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 258-4000 FACSIMILE: (803) 252-3679

DANIEL S. LEWIS
(1940-1981)

*ALSO MEMBER
NORTH CAROLINA BAR

December 3, 2004

VIA FEDERAL EXPRESS

Mrs. Patricia Tarmann
Mr. James Tarmann
1291 Whitehorse Road Ext
Travelers Rest, South Carolina 29690

RE: Mr. and Mrs. James Tarmann vs. Duke Power Company, BellSouth Telecommunications, Inc., and the Public Service Commission Staff (The Tarmanns, hereinafter "you").
Docket No. 2002-57-EC

Dear Mr. or Mrs. Tarmann:

This letter acknowledges that you have served a Notice of Trespass, pursuant to South Carolina law, upon our client, Duke Power, a Division of Duke Energy Corporation, ("Duke"). This Notice forbids Duke, its employees, and/or representatives to enter onto your premises on Whitehorse Road Extension in Travelers Rest, South Carolina ("premises").

As you know, Duke currently provides electric service to your premises. As a result of your actions in serving the Notice, Duke's employees and/or representatives are now prohibited from access onto your premises. For the record, pursuant to Duke's Service Regulations as approved by the Public Service Commission of South Carolina ("Commission") and its easement to your property, Duke has unrestricted access to your premises for any purpose, including responding to an outage, maintaining electric service to your premises, and making any changes to your electric service. Although Duke will take no affirmative steps to terminate your electric service, you have by your actions constructively terminated your electric service.

As a result, **YOU ARE HEREBY PLACED ON NOTICE** that you and all persons and individuals residing in, visiting, and/or invited upon your premises **ASSUME THE RISKS** of any injuries, losses, damages, actions, and adverse events of any kind related to your action in preventing Duke from maintaining, servicing, and providing electric service or for any reason, including Duke's inability to access your premises to correct any outage, maintain or change any service.

SC
COLUMBIA
2004 DEC -3 PM 3:31
FILED

YOU AND YOU ALONE HAVE THE RESPONSIBILITY OF NOTIFYING

residents, visitors, guests, and invitees to your premises, and all other persons, that Duke is not maintaining electric services to your premises and will not correct any outage to your premises. Specifically, your constructive termination of electric service to your premises may cause danger or loss to you and those visiting and residing on your premises.

DUKE IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE OR INJURY TO ANYONE, including but not limited to injuries of any kind, personal injuries, any loss of any kind, economic losses of any kind, damages of any kind, any property damage as a result of your constructive termination of electric service to your premises.

Duke, through its counsel, **IS NOT GIVING YOU LEGAL ADVICE OR BUSINESS ADVICE AND EXPRESSLY DENIES SUCH.** Instead, Duke is advising you that you have and are assuming the risks as a result of your actions and constructive termination of your electric service and you and you alone bear the responsibility for these actions.

You may not rely on this letter in any decision related to your actions in constructively terminating electric service to your premises, as the undersigned counsel are acting solely and expressly for the benefit of Duke and do not purport to represent or advise you in any manner. In fact, Duke expressly affirms to you that you may not rely on this letter to guide your actions in this matter.

Duke does not waive any of its rights, remedies or defenses, legal or equitable, all of which are expressly reserved and Duke does not maintain that it will solely rely on Assumption Of Risk to defend against any loss, injury, claim, damage, and adverse occurrence of any kind which Duke maintains that you and you alone have the duty to prevent or mitigate.

Sincerely,



William F. Austin
Richard L. Whitt

RLW/rgw

cc: see attached Certificate of Service

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2007-17-E/C & 2002-57-E/C**

In Re:

James Tarmann,
Complaint/Petitioner,

vs.

Duke Energy Carolinas, LLC and
Bellsouth Telecommunications, Inc.
Defendants/Respondents.

CERTIFICATE OF SERVICE

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Notice of Termination of Electric Service** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

James and Patricia Tarmann
1289 Whitehorse Road
Travelers Rest, SC 29690

Dan F. Arnett, Chief of Staff
Nanette Edwards
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Dated at Columbia, South Carolina this 21st day of August, 2009.



Leslie Allen